

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) - 2512/MB/2019

Under Section 7 of the I&B Code,
2016

In the matter of

L & T Housing Finance Limited
Brindavan, plot No. 177, C.S.T.
Road, Kalina, Santacruz (east),
Mumbai - 400 098

.... Petitioner

Vs.

Majestic Market Research
Support Services Limited
C-108, 1st Floor, Kanakia Zillion,
Gateway to BKC, LBS Marg, Kurla
(west), Mumbai - 400 070

.... Corporate Debtor

Order delivered on: 17.12.2019

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Shri V. Nallasenapathy, Member (T)

For Petitioner : Mr. Ashish Mehta a/w Mr. Kaustubh Gupte,
Advocates i/b Ethos Legal Alliance

For Corporate Debtor : Ms. Pooja Salvi a/w Mr. Ravi Jadhav, Advocates

Per: V. Nallasenapathy, Member (T)

ORDER

1. L & T Housing Finance Limited (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Majestic Market Research Support Services Limited (hereinafter called the 'Corporate

Debtor') on the ground, that the Corporate Debtor committed default to the extent of Rs. 3,25,00,837/-, as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petition reveals that the Petitioner sanctioned home loan to Mr. Sandeep Bhatia on 26.03.2018 for Rs. 3,30,00,000/- repayable in 180 equated monthly instalments of Rs. 3,34,708/- for the purchase of property, Flat No. 1303, 13th floor, F block, Kanakia Park, Kher Wadi, Bandra, Mumbai – 51 as per the schedule to the home loan agreement annexed at page number 19 to 60 of the petition. It is also revealed that the Petitioner has sanctioned another loan of Rs. 9,00,000/- on 27.03.2018 repayable in 180 equated monthly instalments of Rs. 9,129/-. It is also revealed that for the first loan a sum of Rs. 3,00,00,000/- was disbursed by the Petitioner and for the second loan Rs. 9,00,000/- was disbursed. Both the loans carries an interest of 9% per annum.

3. The loan agreements for both the loans were enclosed to the petition. The home loan agreement in favour of the Petitioner was signed by Mr. Sandeep Bhatia as borrower and the same Mr. Sandeep Bhatia has also signed the home loan agreement in his capacity as Director of the Corporate Debtor herein, as co-borrower.

4. The Petitioner enclosed the following security documents in support of the loan:

- a. Home loan agreement dated 26.03.2018 jointly executed by the principal borrower Mr. Sandeep Sham Bhatia and the co-borrower M/s Majestic Market Research Support Services Limited, the Corporate Debtor herein.
- b. Demand promissory note dated 26.03.2018 jointly executed by the principal borrower Mr. Sandeep Sham Bhatia and the

co-borrower M/s Majestic Market Research Support Services Limited, the Corporate Debtor herein.

- c. Letter evidencing deposit of title deeds in favour of the Petitioner and signed by the principal borrower Mr. Sandeep Sham Bhatia and the co-borrower M/s Majestic Market Research Support Services Limited, the Corporate Debtor herein.
- d. Copy of irrevocable power of attorney dated 26.03.2018, executed by the borrower and the co-borrower in favour of the Petitioner.

5. On the request of the principal borrower Mr. Sandeep Sham Bhatia both the above loans were foreclosed on 08.04.2019. The foreclosure amount for the first loan was Rs. 3,20,00,593/- and for the second loan of Rs. 5,00,244/- as per the foreclosure letters annexed to the petition at page number 81 and 79 of the petition.

6. The Petitioner has enclosed the statement of accounts for both the loans at page number 64 and 70 of the petition.

7. The Petitioner filed an additional affidavit on 06.09.2019 enclosing the following loan recall notices:

- a. Loan recall notice dated 20.05.2019 recalling the loan covered in agreement number MUMHL17002598 and demanded the loan due including the overdue loan instalments to the extent of Rs. 3,11,17,218/-.
- b. Loan recall notice dated 06.09.2019 recalling the loan covered in agreement number MUMHL18001015 and demanded the loan due including the overdue loan instalments to the extent of Rs. 4,94,225/-.

8. The Corporate Debtor filed written statement making the following contentions:

- a. The director of the Corporate Debtor Mr. Sandeep Bhatia availed the loan from the Petitioner, but the Petitioner failed to disburse the entire loan amount and committed breach of the loan agreement.
- b. The said director is not in possession of the flat as the builder failed to provide possession of the flat.
- c. Since the director of the Corporate Debtor was not able to pay the loan, the Petitioner initiated arbitration proceedings and the Petitioner has no locus standi to initiate this proceedings as the matter is already sub-judice before the sole arbitrator Mr. L D Mual (Retired Additional Session Judge).
- d. No CIRP proceedings can be initiated even if there is a slightest dispute or doubt about the amount claimed by the Financial Creditor.

9. The Corporate Debtor itself has submitted in the written statement that the director of the Corporate Debtor Mr. Sandeep Bhatia, the borrower, was not able to pay the loan amount. In view of this statement it is clear that the borrower has defaulted in repaying the financial debt and hence the co-borrower is liable to make the payment, whose liability is joint and several. But the co-borrower who is the Corporate Debtor herein also failed to discharge the loan despite receipt of the loan recall letter from the Petitioner. Hence the debt and default is clearly established in this case.

10. It is appropriate to mention the decision of the Hon'ble Supreme Court in "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*, - (2018) 1 SCC 407" wherein it was held as below:

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt

owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

11. It is not the case of the Corporate Debtor that the debt claimed in this petition is not a financial debt within the meaning of Section 8(a) of the Code.

12. In view of the categorical ruling of the Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*, cited supra, the contentions raised by the corporate debtor in the reply does not hold water and has to be rejected in limine.

13. This Adjudicating Authority, on perusal of the documents filed by the Petitioner, is of the view that the Corporate Debtor as a co-borrower defaulted in repaying the loan availed by borrower and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore, the petition under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- (I) (a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- (II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of moratorium shall have effect from 17.12.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints Mr. Dhiren Shah, B-102, Bhagirathi Niwas, near Natraj Studio, Sir M V Road, Andheri (east), Mumbai – 400 069; Email:- dss@dsshah.in, having Registration No. IBBI/IPA-001/IP-P00220/2017-18/10419, as an Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

14. The Registry is hereby directed to communicate this order to both the parties and the IRP immediately

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)